



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,443	09/17/2001	James Robert Adair JR.	17244-0129	6585
29052	7590	08/24/2004	EXAMINER	
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				TRUONG, THANH K
		ART UNIT		PAPER NUMBER
		3721		

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/954,443	ADAIR ET AL.
	Examiner	Art Unit
	Thanh K Truong	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 May 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 9,12-18 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 9, 12-18 and 21-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This action is in response to applicant's amendment received on May 20, 2004.
2. Applicant's cancellation of claims 10, 11, 19 and is acknowledged.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9, 12-18 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenstadt (3,228,170) in view of Nakamura (6,301,859).

Eisenstadt discloses a method and a system for making portion control sized packaged flowable liquid-containing condiment comprising:

a heat sealable material feeder 23;

a flowable material feeder 101 for feeding a flowable liquid-containing condiment 27; and

a form/fill/seal apparatus structured and arranged for receiving the heat sealable material, forming a portion control sized package with the heat sealable material, filling the portion control sized package with the flowable liquid-containing condiment, and sealing the portion control sized package, the form/fill/seal apparatus including a heat seal die comprising (figures 7 and 15a-e):

a first die member 64 having a longitudinal axis and a die face;

Art Unit: 3721

a second die member 64 having a longitudinal axis and a die face;

a first heating element 65, 66 engaged with the first die member for heating the first die member;

a second heating element 65, 66 engaged with the second die member for heating the second die member;

Eisenstadt discloses the claimed invention, but does not expressly disclose the heat seal die that has first and second longitudinal heat tube.

Nakamura discloses (figures 11A & 11B) a heat seal die comprising:

a first and second die members 15 having longitudinal axis and die face;

a first and second heating elements 24;

a first and second longitudinal heat tubes 26 (a & b) disposed in the first and second die member between the heating element and the die face for maintaining a uniform heat seal temperature along the die face.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Eisenstadt's system and method by incorporating the heat seal die as taught by Nakamura providing an improved heat sealer effective to accomplish a uniform and proper temperature distribution in the seal contact faces to secure a high sealing strength in the resultant seal.

Nakamura further discloses the longitudinal heat tube extends from the one end to the other end of the die member; and the heating element 24 is a heating cartridge disposed in a longitudinal bore 23 (a & b) in the die member; the die face of the first die member 15 has plurality of alternating longitudinal lands and grooves 19 and the

Art Unit: 3721

second die member 15 has plurality of alternating longitudinal lands and grooves 19, the lands and grooves of the first and second die members are arranged for selective mating arrangement; the die member each has longitudinal sides and a raised portion and sloping walls; and the die member each has a temperature sensor 28 disposed in the downwardly facing longitudinal side.

As discussed above Eisenstadt discloses the claimed invention, but does not expressly disclose that the portion size is in the range from 1 to 5 ounces. However, Eisenstadt discloses that one of the object of the invention "is to provide an automatic packaging machine having a high rate of output and which can be operated without interruption by making simple adjustments for changing the size of packages produced in dimension and quantity of matter within the package" (column 1, lines 27-32).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to produce packages of portion size in the range of one desire (range from 1 to 5 ounces), since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

5. Applicant's arguments regarding to the portion control size packaging have been considered but are moot in view of the new ground(s) of rejection.
6. In response to the Applicant's argument that Nakamura patent teaches away from using heat tubes in heat sealing dies (citing column 9, 1. 44 – column 10, 1.27),

the examiner disagrees. Nakamura discloses that the invention of patent 6,301,859 is the improvement over the prior art that is cited in figures 11A-B, however, the heat tubes in heat sealing dies as taught by Nakamura in figures 11A-B remain a pertinent prior art, which the examiner relied on for the 103 rejection in this office action.

Nakamura's heat tubes in the heat sealing die provides an improvement over the heat sealing dies of Eisenstadt, it provides a better sealing die by maintaining a uniform heat seal temperature along the die face, and in combination, Eisenstadt and Niakamura teach all of the claim limitations.

7. The Declarations under 37 CFR 1.132 filed October 6, 2003 is insufficient to overcome the rejection of claims 9, 12-18 and 21-26 based upon Eisenstadt and Nakamura references applied under 35 U.S.C. 103 set forth in this Office action because: facts presented are not germane to the rejection at issue and the Declarations are moot in view of the new ground of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 3721

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tkt
August 16, 2004.



Rinaldi I. Rada
Primary Patent Examiner
Group 3700